

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1336 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

BANK OF BARODA

Appearance:

MR PV NANAVATI for Petitioner
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/1999

ORAL JUDGEMENT

1. On 14-12-1998, this court has ordered on the
request of the petitioner's counsel to delete the names
of respondents No. 2 to 19 from the title of the civil
revision application.

2. The respondent NO.1 - plaintiff, Bank of Baroda
filed civil suit NO. 56 of 1988 in the court of Civil
Judge, (S.D.), Junagadh against the defendants No. 1 to
17 and 19 for recovery of the amount of Rs.6,41,730/=

with future interest on 2-4-1988. The plaintiff- Bank also grounded its claim against the petitioner insurance company on the ground of illegal rejection of claim of loss suffered by the defendant No.1- company on account of fire in its factory.

3. The advocate of the plaintiff -Bank filed an application Ex.49 on 15-3-1993 before the trial court and given out therein that the defendant No.1 -company has fully paid up its dues and the matter is settled between the parties and therefore it may be permitted to withdraw the suit with no order as to costs. On the same day, the learned trial court ordered on Ex.49 according to compromise arrived in between the parties and passed order allowing to withdraw plaintiff the suit and permitted it for refund of 2/3 of court fees. Further the court has ordered for no costs to the defendant. This order is under challenge in this revision application.

4. Shri P.V. Nanavati, learned counsel for the petitioner contended that the counsel for the plaintiff respondent No.1 has got the date preponed fixed in the suit. The matter is not compromised between the petitioner and the plaintiff- respondent No.1. The copy of Ex.49 was not given to the counsel for the petitioner in the trial court. The petitioner has not given out its consent to waive the costs. Under the belief that all the parties have compromised the matter, the trial court has passed this order. The insurance company has spent the huge amount in contesting the suit wherein in fact it was neither necessary nor proper party. The Bank was not the insurer but still it has impleaded the petitioner as a party to the suit and on receiving summons it has engaged an advocate, to whom Rs.3300/- has been paid as fees. Referring to proviso to Order 23 of C.P.C., Shri P.V. Nanavati contends that though it is a right of the plaintiff to withdraw the suit unconditionally but the court has the power to award costs in favour of the defendant. In case notice of this application would have been given to the petitioner certainly it would have pressed for costs.

5. Nobody is present on behalf of the respondent to oppose this revision application.

6. Ex.48 is the application filed by the plaintiff - respondent No.1 which reads as under:

The parties have arrived at a compromise and therefore suit is required to be withdrawn. The

plaintiff therefore submits that the matter be taken on record immediately for disposal of the suit.

7. Ex.49 is another application filed by the plaintiff - respondent's advocate, which is in fact an purshis, which reads as under:

The plaintiff above-named begs to submit this purshis and state that the matter is compromised and settled between the parties. The plaintiff does not want to proceed further with the suit and hence plaintiff be permitted to withdraw the suit with no order as to costs.

The ad-interim relief granted in the suit be continued in terms of compromise in Spl. Suit No. 134/87 till all the outstanding amount under decree in favour of M/s. N.G. Exports industries Ltd. is fully paid up.

8. It nowhere comes out from these two documents that the defendant- petitioner has settled the matter. I do not find anything on the record that the notice of same has been given to the counsel for the petitioner or the petitioner. I find sufficient merits in the contention of the learned counsel for the petitioner that the court is misled by the word, "the parties have settled the suit," but the petitioner was not a party to the settlement. It is understandable where the parties agree to settle the suit and the defendant further waives costs. It is always open to the court not to grant the costs. It is a case where because of the words used in the document aforesaid, it clearly gives out the impression as if the matter is settled by all the parties but the petitioner has not settled the matter and where the plaintiff wants to withdraw the suit though the petitioner could not have any grievance against it but certainly it could have legitimate grievance that costs has to be awarded. True the grant of costs is a discretion of the court but the court has to pass the order giving the reasons not to grant the costs. In case where all the parties have settled the matter and further understanding is disclosed not to claim the costs, the court has power not to award costs to the defendant. In case notice of this application would have been given to the petitioner then certainly true facts would have come up before it and where the court is satisfied that the petitioner has unnecessarily been dragged into litigation

certainly it would have been a fit case where the court would have exercised the discretion in favour of the petitioner and the costs would have been awarded. Here, in this case, I find sufficient merits in the contention of the learned counsel for the petitioner that the petitioner was not a necessary party. There was no privity of contract between the petitioner and the respondent. It is a case where the trial court has passed the order, no costs to the petitioner on the basis of purshis passed by the respondent No.1 - plaintiff and the defendant to which the petitioner was not a party. It is not the case where the petitioner waived the costs. In these facts, it is a case where the order passed by the trial court to the extent not to award costs certainly results in causing of civil consequence to the petitioner. No notice has been given to the petitioner on application. In these facts, it is a case where the court has committed material irregularity in exercise of its jurisdiction and this order if allowed to stand it will certainly cause irreparable injury to the petitioner as in the suit which has been compromised ultimately between the company and the bank, the insurance company has incurred heavy expenses of litigation without there being any fault on its part.

9. In the result, this civil revision application is allowed and the respondent - Bank is directed to pay Rs.3300/- as costs of the suit to the petitioner. Rule is made absolute accordingly.

zgs/-